

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	CASE NO. 1:10CR387
	)	
PLAINTIFF,	)	JUDGE SARA LIOI
	)	
vs.	)	
	)	ORDER
	)	
	)	
JAMES C. DIMORA, et al.,	)	
	)	
DEFENDANTS.	)	

On May 23, 2011, the Court entered an order granting the motions of defendants James Dimora and Michael Gabor to continue the trial in this matter, which was set to begin on September 12, 2011. (Doc. No. 328.) In continuing jury selection in this matter to January 4, 2012, and opening statements to January 9, 2012, the Court renewed its earlier finding that the case was complex and that the ends of justice served by the motions for a continuance outweighed the best interest of the public and defendants in a speedy trial. The Court also relied on the voluminous discovery in this matter, as well as the fact that, on March 30, 2011, the grand jury returned a Superseding Indictment, which added a RICO conspiracy charge and various tax charges. The Court consequently issued an Amended Trial Order, which set forth dates and deadlines that were to govern the proceedings in this matter. (Doc. No. 329.)

The parties timely filed over twenty pre-trial motions and numerous motions in limine. The Court anticipated these filings, inasmuch as they were all timely filed in accordance with the Court's Amended Trial Order. These motions have all been

resolved by the Court. After the deadline for filing motions, Defendant Dimora also filed several additional motions to dismiss and motions in limine. (*See* Doc. Nos. 538, 539, 560, 561, 568, 570, 571, 572, 604.) The Court did not anticipate the filing of these motions and has had to divert its attention away from trial preparation to address them. Several of these motions directly addressed the filing of a separate indictment against Dimora and Michael Forlani in Case No. 1:11CR437. (*See* Doc. Nos. 538 (motion to consolidate), 539 (motion to continue the January 4, 2012 trial), 570 (motion to dismiss for violating double jeopardy), and 571 (motion to dismiss for vindictive prosecution). On December 16, 2011, the Court denied Dimora's motions to consolidate and to continue the trial date. (Doc. No. 578.)

On January 2, 2012, the Court issued an opinion and order denying Dimora's motion to dismiss the present indictment on double jeopardy grounds as frivolous because the motion was premature and filed in the wrong case. (Doc. No. 596.) On January 4, 2012, Dimora filed a notice of appeal with the Sixth Circuit Court of Appeals, challenging this Court's January 2, 2012 order denying his double jeopardy motion. (Doc. No. 603.) Simultaneously, Dimora also filed a motion in this Court to stay proceedings pending the outcome of the interlocutory appeal on the double jeopardy ruling. (Doc. No. 604.) On January 5, 2012, the Court in open court denied the motion to stay as frivolous. The next day, the Court filed a written opinion formalizing its ruling. (Doc. No. 606.)

Consistent with the Court's Amended Trial Order (and before the Court was aware of the filing of the Notice of Appeal, which was filed on January 4, 2012 after normal business hours), the Court commenced voir dire, beginning January 4, 2012 and

ending with the selection of a jury on January 6, 2012. At the conclusion of proceedings on January 5, 2012, counsel for the government expressed concern that Dimora might seek a stay in the Sixth Circuit to halt these proceedings pending consideration by the Sixth Circuit of this Court's double jeopardy ruling. Counsel for Dimora confirmed that he planned to file a motion for a stay with the Sixth Circuit, and that he anticipated that such a motion would be filed on January 9, 2012. In light of this development, the Court elected to delay the swearing in of the jury.

Out of an abundance of caution, the Court shall continue the matter for a brief period of time to afford the Sixth Circuit an opportunity to consider Dimora's expected motion to stay these proceedings. *See, e.g., United States v. Baldwin*, 506 F. Supp. 300, 302 (M.D. Tenn. 1980) (granting a short continuance of the trial to allow the defendant to seek an expedited appeal from the district court's denial of a frivolous motion to dismiss on double jeopardy grounds). The Court, therefore, finds that the ends of justice in briefly continuing the case outweigh the best interest of the public and the defendants in a speedy trial. In the event that the Sixth Circuit has not addressed Dimora's anticipated motion to stay by January 27, 2012, or at an earlier time at the Court's discretion, the Court will revisit its decision to continue the trial in this matter.

**IT IS SO ORDERED.**

Dated: January 9, 2012

  
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**HONORABLE SARA LIOI**  
**UNITED STATES DISTRICT JUDGE**